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JOINT APPLICATION OF ONCOR  
ELECTRIC DELIVERY COMPANY  
LLC AND AEP TEXAS INC. TO  
AMEND THEIR CERTIFICATES OF  
CONVENIENCE AND NECESSITY  
FOR A DOUBLE CIRCUIT 345-KV  
TRANSMISSION LINE IN PECOS,  
REEVES, AND WARD COUNTIES,  
TEXAS (SAND LAKE TO SOLSTICE)

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BEFORE THE  
FILING CLERK

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**APPLICANTS' JOINT REPLY BRIEF  
REGARDING THE SAND LAKE – SOLSTICE PROJECT**

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COME NOW Oncor Electric Delivery Company LLC (“Oncor”) and AEP Texas Inc. (“AEP Texas”) (together, the “Applicants”) and timely file this Joint Reply Brief Regarding the Sand Lake – Solstice Project on or before March 12, 2019, pursuant to SOAH Order No. 2.

## **I. INTRODUCTION AND SUMMARY**

As demonstrated during the hearing on the merits and through the parties’ initial briefs submitted in this case, the remaining contested issues for the administrative law judges (“ALJs”) to consider have essentially been narrowed to a choice between three routes: route 320 (Applicants’ recommended route supported by several intervenors), route 325 (supported by Oxy and COG), and route 41 (Commission Staff’s supported route). Overall, Route 320 as filed best meets the requirements of Public Utility Regulatory Act (“PURA”) § 37.056 and the Commission’s certification rule, 16 Tex. Admin. Code (“TAC”) § 25.101. But Applicants do not oppose the Commission’s selection of any of the routes filed—they are all viable, reasonable alternatives.

Applicants also do not oppose any of the modifications requested by Oxy or COG that are set forth in Mr. Russell J. Marusak’s rebuttal testimony.<sup>1</sup> Applicants understand, however, that in order for the Commission to adopt these requested modifications, it will likely require these parties to obtain consent from the landowners directly affected by the requested modifications.<sup>2</sup> To the extent Oxy and/or COG obtain these consents, Applicants support the adoption and incorporation of such modifications into the approved route, as applicable. Adopting modifications that have the consent of directly affected landowners will decrease the likelihood of engineering constraints impacting the Proposed Project in those areas. To date, no route consent agreements signed by all directly affected landowners of any modification requested by Oxy or COG have been submitted into evidence. Therefore, Applicants will limit their comparisons of these three routes to the versions filed with the CCN application rather than the “modified” versions proposed by Oxy and COG, although cost and environmental data for the modified routes is contained in Applicants’ rebuttal testimony.<sup>3</sup>

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<sup>1</sup> Oncor/AEPTX Ex. 11 (Marusak Rebuttal), Exhibits RJM-R-1 through RJM-R-6.

<sup>2</sup> See, e.g., *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line in Crane, Ector, Loving, Reeves, Ward, and Winkler Counties (Odessa EHV – Riverton and Moss – Riverton CCN)*, Docket No. 48095, Order on Rehearing at 1-2 (adopting Oxy’s requested modification “because the parties have obtained landowner consent from all affected landowners”).

<sup>3</sup> Oncor/AEPTX Ex. 11 (Marusak Rebuttal), Exhibit RJM-R-7 (environmental data); Oncor/AEPTX Ex. 12 at 12 (Peppard Rebuttal) (cost estimates).

## II. REPLY TO PLAINS

Pipelines and other oil and gas industry uses predominate in this study area.<sup>4</sup> Plains recommends avoiding pipeline crossings.<sup>5</sup> As Mr. Marusak's rebuttal testimony covers, however, it would be infeasible to avoid pipeline crossings in this study area.<sup>6</sup>

Plains also asserts that it "is in discussions with Oncor regarding modifications solely on Plains property" as depicted in Figure 4 of its initial brief.<sup>7</sup> That modification of Links A and B2, however, appears to (1) shift the location of Sand Lake Switch on tract 496 (a tract Plains does not own) to the west, (2) change the point of entry into Sand Lake Switch, and (3) parallel the eastern side of a pipeline easement (which Plains does not own), which would require a different entry point into tract 476 (a tract Plains does not own). For numerous reasons, this post-hearing proposal to shift a project endpoint is infeasible<sup>8</sup> and, especially at this late stage of the proceeding, inappropriate.

To the extent Plains subsequently requests a reasonable, amended modification wholly within its property (or obtains any necessary consents from other landowners as applicable), Oncor will work with Plains in good faith to evaluate such amended modification request, consistent with the Commission's final order.

## III. REPLY TO OXY AND COG

Oxy and COG both prefer route 325, though they also do not oppose route 320 provided the Commission adopts their requested modifications.<sup>9</sup> Route 325 as filed has attractive features for the Commission to consider, such as a higher percentage of its length paralleling existing compatible rights-of-way (including a higher percentage of paralleling existing transmission lines) compared to routes 320 and 41 as filed.<sup>10</sup> Route 325 parallels existing compatible rights-of-way

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<sup>4</sup> See, e.g., Oncor/AEPTX Exs. 10A and 10B (hearing maps); Oncor/AEPTX Ex. 1 (Application) at 5; *id.*, Attachment No. 1 at 3-70 – 3-73.

<sup>5</sup> See, e.g., Plains Brief at 17.

<sup>6</sup> Oncor/AEPTX Ex. 11 at 3 (Marusak Rebuttal).

<sup>7</sup> Plains Brief at 7, 13-14, 18 & 29.

<sup>8</sup> For example, Sand Lake Switch served as an endpoint for a previous Oncor project for which the Commission has already granted a CCN. See *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a 345/138-kV Transmission Line in Loving, Reeves, and Ward Counties (Riverton-Sand Lake)*, Docket No. 47368, Order (May 11, 2018). Moreover, the site for Sand Lake Switch is already under development. See, e.g., Oncor/AEPTX Ex. 1 (Application) at 6.

<sup>9</sup> Oxy Brief at 4; COG Brief at 11; COG Ex. 2 at 7-8 (Lowery Cross-Rebuttal).

<sup>10</sup> See Oncor/AEPTX Ex. 1 (Application), Attachment No. 1, Appendix E at E-4 and E-30 (Table 7-2 environmental data for routes 41, 320, and 325).

for approximately 48.7% of its length,<sup>11</sup> compared to approximately 27.2% for route 320<sup>12</sup> and 26.6% for route 41.<sup>13</sup> Oxy and COG's testimony also cites potential constraints along central corridor routes such as routes 320 and 41 due to ongoing oil and gas development, compared to the less-developed western parts of the study area, including routes such as route 325. Therefore, a lower likelihood of engineering constraints may exist along route 325 compared to the more active development areas crossed by routes 320 and 41.

Oxy and COG also support giving Applicants post-approval flexibility to modify the approved route to the minimum extent necessary to avoid engineering constraints encountered during the design and construction of the project, and such flexibility could be limited to properties with no habitable structures in which the primary use is mineral development.<sup>14</sup> Should the Commission determine the facts of this case warrant departure from its standard language on engineering constraints and adoption of post-approval flexibility, Applicants support inclusion of this or similar language in the Commission's final order.

#### **IV. REPLY TO COMMISSION STAFF**

Commission Staff recommends selection of route 41, although it costs \$1.6 million more than route 320, due to the lower number of habitable structures it affects.<sup>15</sup> One issue for the ALJs and the Commission to weigh is whether the mobile living units and mobile office units that make up the vast majority of the difference in the habitable structure count between route 320 and route 41 justify its approximately \$1.6 million increased cost compared to route 320. Route 41's use of Links B1 and C3—rather than Links B2 and B3 used by route 320—is opposed by Plains, a landowner who would be crossed by either route. Using route 320 instead of route 41 would moot the claims Plains makes with respect to paralleling its crude oil pipeline along Link B1 and rendering its property less useful. While viable and constructible, Link B1 requires three transmission lines crossings, whereas Link B2 involves only one transmission line crossing,<sup>16</sup> rendering construction of route 320 somewhat less complicated compared to route 41. To the

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<sup>11</sup> Oncor/AEPTX Ex. 1 (Application), Attachment No. 1, Appendix E at E-30 (Table 7-2 environmental data for route 325 showing 138,047 feet paralleling compatible ROW out of 283,722 feet in total length).

<sup>12</sup> Oncor/AEPTX Ex. 1 (Application), Attachment No. 1, Appendix E at E-30 (Table 7-2 environmental data for route 320 showing 63,940 feet paralleling compatible ROW out of 235,181 feet in total length).

<sup>13</sup> Oncor/AEPTX Ex. 1 (Application), Attachment No. 1, Appendix E at E-4 (Table 7-2 environmental data for route 41 showing 138,047 feet paralleling compatible ROW out of 283,722 feet in total length).

<sup>14</sup> *See, e.g.*, COG Brief at 10, 28-29; Tr. at 89 (Mendoza). *See also* Oncor/AEPTX Ex. 12 at 5-6 (Peppard Rebuttal).

<sup>15</sup> *See, e.g.*, Tr. at 116-123 (Bautista).

<sup>16</sup> Tr. at 58-61 (Peppard); *see also* Oncor/AEPTX Exs. 10A and 10B (hearing maps).

extent the Commission chooses a central corridor route, Applicants submit the qualitative nature of these temporary mobile units along Link B2—their lack of permanent foundations or utilities, the existence of hitches to move them, and Oncor’s experience with the changing nature of similar “man camp” developments in West Texas, among others—should be taken into account in the Commission’s prudent avoidance analysis. Giving these habitable structures the appropriate weight, Applicants have shown that route 320 best meets the routing guidelines under PURA and the Commission’s rules.

## **V. CONCLUSION**

For the reasons stated above and in their Initial Brief, Applicants respectfully request the ALJs issue a PFD recommending approval of the Sand Lake – Solstice Project along route 320, including adoption of any applicable modifications requested by Oxy and/or COG to the selected route for which applicable landowner consents have been timely obtained and submitted.

Respectfully submitted,

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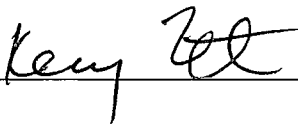
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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing has been hand-delivered or sent via courier service, email, fax, overnight delivery, or first class United States mail, postage prepaid, to all parties of record in this proceeding, on the 12th day of March 2019.

  
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